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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 97-052N]

Retained Water in Poultry Products; Protocols for Obtaining Data on Meat and Poultry Chilling Processes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is notifying the public of its interest in receiving and reviewing protocols for obtaining data on chilled, ready-to-cook poultry products and simultaneously requesting comments on the principles which it has tentatively identified to guide its review of those protocols. The data may be used: to benchmark the effectiveness of washing, chilling, and draining operations in minimizing pathogen growth and moisture retention in poultry products; and to develop proposed new regulations limiting retained moisture in poultry products. FSIS views the data collection as a necessary step in strengthening the basis for its regulations in the wake of a recent Federal District Court decision setting aside as "arbitrary and capricious" the regulatory limits on moisture absorption and retention in ready-to-cook whole chickens and turkeys. FSIS and the poultry industry have relied on these limits for many years to gauge the effectiveness of chilling processes in meeting the regulatory objective of minimizing moisture retention in poultry products. Any new regulatory limits on moisture retention must be based on sound data. The Agency is willing to review protocols developed according to the specifications published in this document or alternative protocols that may be suggested by commenters.

In view of a recent petition from a meat and poultry industry association, FSIS is also willing to review similar

protocols for obtaining data on processes for the chilling of raw meat carcasses and parts.

DATES: Comments on the protocol specifications discussed in this document should be received on or before January 8, 1998.

ADDRESSES: Please send an original and two copies of comments to FSIS Docket Clerk, DOCKET #97-052, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stofa, Assistant Deputy Administrator for Regulations and Inspection Methods Development, FSIS, Room 402 Annex Building, Washington, DC 20250-3700; (202) 205-0699.

SUPPLEMENTARY INFORMATION: FSIS carries out the mandates of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) to ensure that meat, meat food, and poultry products prepared for interstate and foreign commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The Agency maintains continuous inspection oversight of operations in meat and poultry slaughtering and processing establishments. Among the requirements enforced by the Agency are those having to do with the post-evisceration handling and storage of carcasses and parts.

Dressed carcasses typically move through washes and sprays to remove slaughter debris and foreign matter before being conveyed to chilled, refrigerated, or frozen. FSIS regulations governing the chilling of livestock and poultry carcasses reflect accepted commercial practices. Prior to shipment, livestock carcasses have traditionally been air-chilled and shipped in refrigerated trucks or railroad cars; they are commonly divided into primal and subprimal parts at the slaughtering establishment, cut-up, or boned-out and boxed before being shipped frozen or refrigerated. Prior to shipment, livestock carcasses are usually held in large cooling rooms and may be subject to spraying or "misting" processes intended to prevent them from shrinking. It is technologically feasible and commercially practical to air-chill livestock carcasses, combining this process with a spray system in a manner that, on average, does not result in an increase in the carcass weight. The

regulations affecting chilled livestock carcasses and parts concern the sanitation conditions of storage or transport.

Poultry carcasses have traditionally been immersion-chilled and are shipped as chill-packed, ice-packed, or frozen. The poultry chilling regulations require that carcasses be chilled to 40 °F or less within a specified time after slaughter and limit the amount of retained water in product.

Poultry carcasses are chilled in immersion chilling tanks filled with water or water and ice to remove animal heat and inhibit microbial growth. Modern chillers are equipped with refrigeration units and systems for controlling water flow volume, direction, and agitation. They are efficient and effective, but inevitably, immersion-chilled poultry carcasses absorb water, mostly under the skin. The absorption of water during chilling has been considered acceptable in good commercial practice since the 1940's as a trade-off to gain the food-safety benefits of rapid chilling. The immersion chilling of poultry was considered good commercial practice in 1957, when Congress enacted the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA).

The Department promulgated regulations limiting moisture absorption in poultry in 1959, 1961, and 1970 (December 1, 1959, 24 FR 9566; July 19, 1961, 26 FR 6471; October 7, 1970, 35 FR 739). The regulations, covering the various kinds and weight classes of frozen, ice-packed, and chilled poultry, allow processors flexibility in adjusting their chilling systems as long as the maximum water absorption limits are not exceeded. Each processor establishes procedures to comply with the chilling and water absorption control requirements. Inspectors sample carcasses each day from each chilling system before washing and after chilling, and with limited draining time to determine if the poultry is in compliance with the absorbed moisture limits. If the moisture limits are exceeded, the poultry is retained until enough moisture has drained to allow the birds to be in compliance.

As a practical matter, establishments must keep their overall moisture absorption averages below the maximum limitations to meet the water absorption limits on a day-to-day basis.

The average percentage below the limits varies from establishment to establishment, depending on the individual operation. Most poultry establishments consistently comply with the water control requirements.

The moisture retention limits and other differences between the meat and poultry inspection regulations have become a focus of attention. Early in 1996, for example, FSIS received a petition from several national livestock industry associations concerning perceived inequities between the meat and poultry regulations. Among other issues, the petitioners questioned the difference between water absorption allowances for meat and for poultry.

FSIS has studied the regulations to determine where the regulatory treatment of different species can be made the same. In 1992, FSIS commissioned the Research Triangle Institute (RTI) to compare the two sets of regulations. In June 1993, RTI issued a comprehensive report, which attributed the differences on water absorption to "traditional industry practice."¹ FSIS has also adopted a regulatory reform plan that will lead to a consolidated set of regulations that apply to all inspected species. The Agency's "Pathogen Reduction; Hazard Analysis and Critical Control Points Systems" (PR/HACCP) final rule (61 FR 38806; July 25, 1996) and the recent proposed rulemaking on sanitation (62 FR 45046; August 25, 1997) are examples of initiatives in this plan.

In 1994, a group of poultry consumers and red meat producers brought an action against the Department in a Federal District Court challenging several differences in the regulatory requirements for meat and poultry, including the regulations which allow the absorption and retention of water in chilled poultry.

Plaintiffs in *Kenney et al. v. Glickman* alleged that poultry products containing absorbed water were both economically adulterated and misbranded within the meaning of the PPIA. They also alleged that the regulations violated the Administrative Procedure Act because they were arbitrary and capricious when compared to the regulatory prohibition on absorbed water in meat carcasses. The Court found that poultry containing absorbed water was not economically adulterated or misbranded under the PPIA. However, the Court also found that the regulation specifying moisture absorption and retention limits for

ready-to-cook poultry that is to be frozen, cooked, or consumer-packaged as whole poultry (9 CFR 381.66(d)(2)) was arbitrary and capricious because the rulemaking record failed to adequately explain how the particular water retention levels were set and why meat and poultry should be treated differently.

Need for Current Data on Chilling and Moisture Retention

The Court left in place the general requirement at 9 CFR 381.66(d)(1) for establishments to minimize moisture absorption and retention in poultry at the time of packaging. The Court also left standing the regulations at 9 CFR 381.66 (d)(3)–(d)(6) controlling the amount of retained moisture in chickens and turkeys that are to be cut up or ice-packed. But the Court's decision left FSIS with no regulatory maximum limit for retained moisture in chilled or frozen whole poultry carcasses.

FSIS believes it is necessary to clarify what percentages, if any, are permissible in raw meat and poultry, and under what circumstances. Otherwise, the controversy that was brought to a head in the *Kenney* case will remain unresolved—a situation the Agency considers unsatisfactory. FSIS needs better quantitative information before considering whether to amend the current requirements limiting moisture retention in poultry products, and particularly in ready-to-cook whole birds. For example, FSIS needs baseline data reflecting the performance capabilities of technology now in use in inspected establishments. The data should be collected under acceptable protocols in accordance with the specifications described below.

On October 2, 1997, the American Meat Institute, a trade association representing meat and poultry slaughtering and processing establishments, petitioned the Department to allow incidental levels of moisture in meat and poultry as part of chilling practices that improve food safety. In view of this petition, FSIS also is willing to consider data on processes for the chilling of meat carcasses and parts. The data should be collected under acceptable protocols in accordance with the specifications described below, as applicable in meat establishments.

Protocol for Gathering Moisture Retention Data

A protocol should state a purpose. The Agency would prefer that the purpose be to determine the amount or percentage of moisture absorption and retention that is inevitable using a

particular chilling system while achieving the regulatory pathogen reduction performance standard for *Salmonella* (for chickens) as set forth in the PR/HACCP final rule and the time/temperature requirements set forth in 9 CFR 381.66.

The protocol should state the type of washing and chilling system used by the establishment. For poultry establishments, the main chiller types, identified by the mechanism used to transport the birds through the chiller or to agitate the water in the chiller, are the drag-through, the screw type, and the rocker-arm type.

The protocol should also describe the configuration of the chiller system components, modifications of the components, and steps in the chilling process. The description should include the number of chillers in a series and arrangements of chilling system components, and the number of evisceration lines feeding into a chiller system. If there is a pre-chilling step in the process, its purpose and the type of equipment used should be accurately described. Any mechanical or design changes made to the chilling equipment should be described.

All special features in the chilling process, such as antimicrobial treatments, should be described. Also, the length and velocity of the dripping line should be described, as well as the time allowed for dripping. Any special apparatus, such as a mechanism for squeezing excessive moisture from chilled birds, should be explained.

Next, the protocol should contain a description of variable factors in the chilling system that affect water absorption and retention. Such factors are typically considered to be the time in chiller water, the water temperature, and agitation. The protocol should consider air agitation, where applicable.

Additional factors that may affect water-absorption and retention are scalding temperature and the pressure or amount of buffeting applied to birds by feather removal machinery, and the resultant loosening of the skin. Another factor that should be considered is the method used to open the bird for evisceration. Commenters may suggest additional factors that should be considered.

The protocol should also state the standards to be met by the chilling system. For example, the chilling system may be designed simply to achieve a reduction in temperature of ready-to-cook poultry to less than 40 °F. within the time limit specified by the regulations, or in less time. As to the standard for pathogen minimization, the *Salmonella* pathogen reduction

¹ From the "Summary Report" in RTI Report: *Comparison of USDA Meat and Poultry Regulations*. Title 9 CFR: Subchapter A, Subchapter C, June 1993.

standards, as set forth in the PR/HACCP final rule, have been suggested. Although there is not yet an applicable *Salmonella* standard for turkeys, commenters are free to suggest a practicable standard for use in gathering data on turkeys under the protocols here suggested. Commenters are also free to suggest the use of other microbiological targets, such as a standard for reduction in generic *E. coli* counts or reductions in numbers of other microorganisms.

Finally, the protocol should describe the testing methods to be employed both for measuring water absorption and retention and for sampling and testing product for pathogen reductions. With respect to the latter, FSIS recommends the methods to be used for *E. coli* and *Salmonella* testing under the PR/HACCP final rule. The number of samples, the type of samples, the sampling time period and the type of testing or measurement should be included in the protocol. There also should be a provision for reporting data obtained, summarizing the results and drawing conclusions.

FSIS requests that interested parties submit their comments on the foregoing protocol specifications at their earliest opportunity, and preferably by the date indicated in the **DATES** section of this document. Should FSIS decide to issue a notice of proposed rulemaking on retained moisture, sound, readily available data will be needed during the comment period to avoid a protracted rulemaking.

Done at Washington, DC: December 3, 1997.

Thomas J. Billy,

Administrator, Food Safety Inspection Service.

[FR Doc. 97-32193 Filed 12-8-97; 8:45 am]

BILLING CODE 3410-DM-P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0992]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The proposed update addresses increased rates for credit card accounts triggered by events such as late

payments or exceeding credit limits. It provides guidance on "same-as-cash" transactions in open-end plans. It also addresses how creditors may determine whether credit is an open-end plan or a closed-end transaction. In addition, the proposed update discusses issues such as the treatment of annuity costs in reverse mortgage transactions and transaction fees imposed on checking accounts with overdraft protection.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should refer to Docket No. R-0992, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: For Subparts A and B (open-end credit), Jane E. Ahrens, Senior Attorney, or Obrea O. Poindexter, Staff Attorney; for Subparts A, C, and E (closed-end credit and reverse mortgages), Ms. Ahrens or James A. Michaels, Senior Attorney, or Michael E. Hentrel, Staff Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise. The Board expects to adopt revisions to the commentary in final form in March 1998; to the extent the revisions impose new requirements on creditors, compliance would be optional until October 1, 1998, the effective date for mandatory compliance.

II. Proposed Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(2) Advertisement

Comment 2(a)(2)-1 is revised to address communications to consumers about existing accounts. In response to requests for guidance, the proposed comment provides examples of communications that are and are not advertisements.

2(a)(18) Downpayment

Proposed comment 2(a)(18)-3 gives guidance on how a creditor discloses the downpayment in a credit sale if a trade-in is involved and if the amount of the existing lien on the trade-in exceeds its value. The comment clarifies that creditors should disclose zero and not a negative amount.

2(a)(20) Open-end Credit

The Board has been asked by Attorneys General of several states to provide additional guidance concerning how to determine whether credit is an open-end plan or a closed-end transaction. The Attorneys General are concerned that some retailers selling big-ticket items have established questionable "revolving charge accounts" to finance the purchase of such items, resulting in consumers making major purchases without adequate information about the true cost of the transactions. Proposed comment 2(a)(20)-3 includes factors that creditors, particularly those engaged in credit sales, should consider in determining the difference between an open-end plan and a closed-end transaction. Proposed comment 2(a)(20)-5 clarifies when a line of credit is not self-replenishing.